

SENATE BILL NO. 132

INTRODUCED BY L. MOSS

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE CONFIDENTIALITY AND SHARING OF TAX INFORMATION; REQUIRING THE DISCLOSURE OF THE LAST FOUR DIGITS OF THE FEDERAL TAX IDENTIFICATION NUMBER OF A BUSINESS ENTITY ON THE ANNUAL REPORT FILED WITH THE OFFICE OF THE SECRETARY OF STATE; LIMITING DISCLOSURE OF THE BUSINESS ENTITY'S FEDERAL TAX IDENTIFICATION NUMBER; AUTHORIZING THE DEPARTMENT OF REVENUE TO DISCLOSE CERTAIN INFORMATION FROM TAX RETURNS AND REPORTS TO THE SECRETARY OF STATE; AUTHORIZING THE DEPARTMENT OF REVENUE TO DISCLOSE CERTAIN RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT INFORMATION; LIMITING DISCLOSURE OF RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT INFORMATION; AUTHORIZING THE DEPARTMENT OF REVENUE TO SHARE LODGING SALES AND USE TAX INFORMATION WITH THE DEPARTMENT OF COMMERCE; LIMITING DISCLOSURE OF LODGING SALES AND USE TAX INFORMATION; REPEALING THE LAW THAT LIMITED DISCLOSURE OF RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT REPORTS AND INFORMATION; AMENDING SECTIONS 15-30-303, 15-31-511, 15-31-603, 15-38-109, 15-68-815, 35-1-1104, AND 35-8-208, MCA; ~~REPEALING SECTION 15-38-109, MCA;~~ AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

~~WHEREAS, the limitations on disclosure of resource indemnity trust and ground water assessment reports and information provided in section 15-38-109, MCA, are inconsistent with the public nature of comparable information for all other natural resource taxes; and~~

~~WHEREAS, the inconsistency causes confusion and inefficiencies in the department of revenue's administration of natural resource taxes; and~~

~~WHEREAS, the limitations on disclosure adversely affect the ability of the department of revenue to work with local and tribal governments and other state agencies in administering the tax; and~~

~~WHEREAS, the department of revenue makes available to the public reports and information related to its administration of all other natural resource taxes; and~~

~~WHEREAS, the Legislature finds that section 15-38-109, MCA, should be repealed and that the resource~~

~~indemnity trust and ground water assessment reports and information should be treated as public information in the same manner as other natural resource tax reports and information.~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in 5-12-303, 15-1-106, 17-7-111, and subsections (7) and (8) of this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; ~~or~~

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311; or

(d) the delivery to the secretary of state, pursuant to 15-31-603, of the name, address, and business

activity code of any corporation, business trust, limited partnership, limited liability company, or limited liability partnership that filed a tax return or report required by this chapter.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any ~~offense against~~ violation of subsections (1) through (4) is punishable by a fine not exceeding \$500. If the offender is an officer or employee of the state, the offender must be dismissed from office or employment and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) On written request to the director or a designee of the director, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and

1 abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs
2 information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and
3 industry is an employee, an independent contractor, or self-employed;

4 (d) to the department of fish, wildlife, and parks specific information that is available from income tax
5 returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and
6 fishing licenses;

7 (e) to the board of regents information required under 20-26-1111;

8 (f) to the legislative fiscal analyst and the office of budget and program planning individual income tax
9 information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of budget
10 and program planning must be the same as the information provided to the legislative fiscal analyst.

11 (g) to the department of transportation farm income information based on the most recent income tax
12 return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the
13 applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department
14 of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

15 (h) to the commissioner of insurance's office all information necessary for the administration of the small
16 business health insurance tax credit provided for in Title 33, chapter 22, part 20."

17
18 **Section 2.** Section 15-31-511, MCA, is amended to read:

19 **"15-31-511. Confidentiality of tax records.** (1) Except as provided in this section, in accordance with
20 a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

21 (a) the amount of income or any particulars set forth or disclosed in any return or report required under
22 this chapter or any other information relating to taxation secured in the administration of this chapter; or

23 (b) any federal return or information in or disclosed on a federal return or report required by law or rule
24 of the department of revenue under this chapter.

25 (2) (a) An officer or employee charged with custody of returns and reports required by this chapter may
26 not be ordered to produce any of them or evidence of anything contained in them in any administrative
27 proceeding or action or proceeding in any court, except:

28 (i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

29 (ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of
30 this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

1 (b) If the production of a return, report, or information contained in them is ordered, the court shall limit
2 production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the
3 action or proceeding.

4 (3) This section does not prohibit:

5 (a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer
6 who filed the return or report or to the taxpayer's authorized representative;

7 (b) the publication of statistics prepared in a manner that prevents the identification of particular returns,
8 reports, or items from returns or reports;

9 (c) the inspection of returns and reports by the attorney general or other legal representative of the state
10 in the course of an administrative proceeding or litigation under this chapter;

11 (d) access to information under subsection (4);

12 (e) the director of revenue from permitting a representative of the commissioner of internal revenue of
13 the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer
14 to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of
15 income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an
16 investigation of the income or return of a corporation. The director of revenue may not furnish that information
17 to a person representing the United States or another state unless the United States or the other state grants
18 substantially similar privileges to an officer of this state charged with the administration of this chapter.

19 (f) the disclosure of information to the commissioner of insurance's office that is necessary for the
20 administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20;

21 (g) the delivery to the secretary of state, pursuant to 15-31-603, of the name, address, and business
22 activity code of any corporation, business trust, limited partnership, limited liability company, or limited liability
23 partnership that filed a tax return or report required by this chapter.

24 (4) On written request to the director or a designee of the director, the department shall:

25 (a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to
26 the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection
27 (1); and

28 (b) provide corporation income tax information, including any information that may be required under Title
29 15, chapter 30, part 11, to the legislative fiscal analyst, as provided in 5-12-303 or 15-1-106, and the office of
30 budget and program planning, as provided in 15-1-106 or 17-7-111. The information furnished to the legislative

fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or public employee is convicted of violating this section, the person is dismissed from office or employment and may not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction."

Section 3. Section 15-31-603, MCA, is amended to read:

"15-31-603. List of entities furnished by and to secretary of state. (1) On or before the 15th day of each month, the secretary of state shall provide a list of all new corporations, limited partnerships, limited liability companies, and limited liability partnerships, foreign and domestic, subject to the terms of Title 35, chapters 1, 4, 5, 8 through 10, and 12, to the department of revenue. The list must include the following information:

(1)(a) the name of the entity;

(2)(b) the principal office of the entity;

(3)(c) the name and address of the registered agent of the entity in Montana, if applicable; and

(d) the last four digits of the federal tax identification number of the entity, if applicable; and

(4)(e) other information that the director of the department of revenue may require.

(2) On or before December 15 of each year, the department shall furnish to the secretary of state a list of all corporations, business trusts, limited partnerships, limited liability companies, and limited liability partnerships that have filed a tax return or report required by chapter 30 or this chapter. The list must include the following information:

(a) the name of the entity;

(b) the address of the entity; and

(c) the business activity code of the entity, if available."

SECTION 4. SECTION 15-38-109, MCA, IS AMENDED TO READ:

"15-38-109. Restricted access to records information. (1) The Except as provided in subsection (2), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information furnished by the producer to the department for the purpose of this chapter must be treated as provided in 15-31-511 that is disclosed in a report or return required to be filed under this

chapter or secured in the administration of this chapter.

(2) (a) This section does not prohibit the disclosure of information to the department of environmental quality necessary for the administration of the resource indemnity trust and ground water assessment fee provided for in this chapter.

(b) The information furnished under subsection (2)(a):

(i) is not a public record and may be used only for purposes described in subsection (2)(a); and

(ii) is subject to the same restrictions on disclosure outside the department of environment quality as provided in subsection (1)."

Section 5. Section 15-68-815, MCA, is amended to read:

"15-68-815. Information -- confidentiality -- agreements with another state. (1) (a) Except as provided in subsections (2) through ~~(4)~~ (5), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information that is disclosed in a report or return required to be filed under this chapter or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity and content of any particular report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-303 or 15-31-511 for violating the confidentiality of individual income tax or corporation license information.

(2) (a) The department may enter into an agreement with the taxing officials of another state for the interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(b) In order to implement the provisions of this chapter, the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by this chapter, the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

(4) This section may not be construed to limit the investigative authority of the legislative branch, as provided in 5-11-106, 5-12-303, or 5-13-309.

1 (5) On written request to the director or a designee of the director, the department shall furnish to the
2 department of commerce information necessary to administer funds distributed to it pursuant to 15-65-121. The
3 information furnished to the department of commerce is subject to the same restrictions on disclosure outside
4 that office as provided in subsection (1)(a)."

5
6 **Section 6.** Section 35-1-1104, MCA, is amended to read:

7 **"35-1-1104. Annual report for secretary of state.** (1) Each domestic corporation and each foreign
8 corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual
9 report, executed as provided in 35-1-217, that sets forth:

10 (a) the name of the corporation and the jurisdiction under whose law it is incorporated;

11 (b) the information required by 35-7-105(1);

12 (c) the address of its principal office, wherever located;

13 (d) the names of its principal officers, except that in the case of a corporation that has eliminated its
14 board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead; ~~and~~

15 (e) the names of its directors, except that in the case of a corporation that has eliminated its board of
16 directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead; and

17 (f) the last four digits of the corporation's federal tax identification number.

18 (2) Information in the annual report must be current as of the date the annual report is executed on behalf
19 of the corporation.

20 (3) The first annual report must be delivered to the secretary of state between January 1 and April 15
21 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation
22 was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state
23 between January 1 and April 15.

24 (4) If an annual report does not contain the information required by this section, the secretary of state
25 shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for
26 correction. If the report is corrected to contain the information required by this section and delivered to the
27 secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

28 (5) The LAST FOUR DIGITS OF THE CORPORATION'S federal tax identification number of the corporation may
29 not be disclosed except to the department of revenue pursuant to 15-31-603."

1 **Section 7.** Section 35-8-208, MCA, is amended to read:

2 **"35-8-208. Annual report for secretary of state.** (1) A limited liability company or a foreign limited
3 liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an
4 annual report that sets forth:

5 (a) the name of the limited liability company and the jurisdiction under whose law it is organized;

6 (b) the information required by 35-7-105(1);

7 (c) the address of its principal office, wherever located;

8 (d) (i) if the limited liability company is managed by a manager or managers, a statement that the
9 company is managed in that fashion and the names and street addresses of the managers;

10 (ii) if the management of a limited liability company is reserved to the members, a statement to that
11 effect;

12 (e) if the limited liability company is a professional limited liability company, a statement that all of its
13 members and not less than one-half of its managers are qualified persons with respect to the limited liability
14 company; and

15 (f) the last four digits of the limited liability company's federal tax identification number.

16 (2) Information in the annual report must be current as of the date the annual report is executed on behalf
17 of the limited liability company.

18 (3) The first annual report must be delivered to the secretary of state between January 1 and April 15
19 of the year following the calendar year in which a domestic limited liability company is organized or a foreign
20 limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the
21 secretary of state between January 1 and April 15.

22 (4) If an annual report does not contain the information required by this section, the secretary of state
23 shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to
24 the limited liability company for correction.

25 (5) The annual report must be executed by at least one member of the limited liability company or by the
26 authorized agent.

27 (6) A domestic professional limited liability company or a foreign professional limited liability company
28 authorized to transact business in this state shall annually file before April 15, with each licensing authority having
29 jurisdiction over a professional service of a type described in its articles of organization, a statement of
30 qualification setting forth the names and addresses of the members and managers of the company and additional

1 information that the licensing authority may by rule prescribe as appropriate in determining whether the company
2 is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter.
3 The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

4 (7) The LAST FOUR DIGITS OF THE federal tax identification number of the limited liability company may not
5 be disclosed except to the department of revenue pursuant to 15-31-603."

6
7 ~~NEW SECTION. Section 7. Repealer. Section 15-38-109, MCA, is repealed.~~

8
9 NEW SECTION. Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is
10 effective on passage and approval.

11 (2) (a) [Sections 3, ~~5~~ 6, and ~~6~~ 7] are effective January 1, 2010.

12 (b) [Section ~~7~~ 4] is effective July 1, 2009.

13
14 NEW SECTION. Section 9. Applicability. (1) [Sections ~~5~~ 6 and ~~6~~ 7] apply to annual reports filed with
15 the secretary of state after December 31, 2009.

16 (2) [Section ~~7~~ 4] applies to resource indemnity trust and ground water assessment returns and
17 information filed with the department of revenue after June 30, 2009.

18 - END -